

ItemLEG06-02 Response Form

Title: Evidentiary Objections in Motions for Summary Judgment
(Code Civ. Proc., § 437c)

- ☐ **Agree** with proposed changes
- ☐ **Agree** with proposed changes **if modified**
- ☐ **Do not agree** with proposed changes

Comments: _____

Name: _____ **Title:** _____

Organization: _____

☐ **Commenting on behalf of an organization**

Address: _____

City, State, Zip: _____

Please **write** or **fax** or **respond using the Internet** to:

Address: Ms. Romunda Price,
Judicial Council, 455 Golden Gate Avenue,
San Francisco, CA 94102
Fax: (415) 865-7664 **Attention:** Romunda Price
Internet: www.courtinfo.ca.gov/invitationstocomment

DEADLINE FOR COMMENT: 5:00 p.m., Friday, June 23, 2006

Your comments may be written on this *Response Form* or directly on the proposal or as a letter. If you are not commenting directly on this sheet please remember to attach it to your comments for identification purposes.

*Circulation for comment does not imply endorsement by the Judicial Council,
the Rules and Projects Committee, or the Policy Coordination and Liaison Committee.
All comments will become part of the public record of the council's action.*

Invitations to Comment LEG06-02

Title	Evidentiary Objections in Motions for Summary Judgment (Code Civ. Proc., § 437c)
Summary	The statute on summary judgment motions would be amended to require that all objections made in support of or opposition to a motion for summary judgment, except in unlawful detainer cases, be in writing. This would ensure that all parties and the court have an opportunity to carefully consider the objections.
Source	Civil and Small Claims Advisory Committee Hon. Elihu M. Berle, Chair
Staff	Patrick O'Donnell, Committee Counsel, 415-865-7665 patrick.o'donnell@jud.ca.gov
Discussion	<p>Summary judgment motions play an important role in resolving civil cases. A motion for summary judgment asks the court to determine that an entire action has no merit or that there is no defense. (Code Civ. Proc., § 437c(a).) Summary judgment motions enable a court to determine that a party's pleadings lack evidentiary support and thus the action should be terminated without a trial.</p> <p>Evidence is crucial to the determination of a motion for summary judgment. A motion for summary judgment must be supported by evidence establishing the moving party's right to the relief sought. (Code Civ. Proc., § 437c(b)(1).) Similarly, a party opposing a motion must show the court that there is a "triable issue" of fact and refer to the evidence in support and in opposition to the motion indicating the controversy. (Code Civ. Proc., § 437c(g).)</p> <p>Because motions for summary judgment turn on the evidence preferred in support of or opposition to the motion, objections to evidence are crucial to the determination of the case. Therefore, it is very important that objections be presented in a clear manner so that the court can carefully consider all the objections. Accordingly, it would be highly beneficial for the summary judgment statute to require all objections to be in writing.</p> <p>Currently, in Code of Civil Procedure section 437c, subdivision (b)(5) provides: "Evidentiary objections not made at the hearing shall be deemed waived."</p>

Although this statute does not expressly state that a party may raise evidentiary objections orally rather than in writing, it implies that oral objections are allowed. Also, the statute implies that objections may be made for the first time at the hearing.

If section 437c(b)(5) is so interpreted, it poses practical problems for the proper consideration of objections to motions for summary judgment. As explained above, evidentiary objections to motions are crucial and may be quite voluminous. It is important that they be properly presented and carefully considered. To be fully considered, objections should be made in writing so that the court can give them careful consideration.

Thus, to clarify the law and expressly provide for written objections on summary judgment motions, this legislative proposal recommends amending section 437c(b)(5) to provide: "All evidentiary objections shall be in writing, except in unlawful detainer cases. Failure to serve and file written objections waives the objections."

This amendment is intended to improve the procedures for determining summary judgment motions in the California trial courts.

Attachment

Proposal

Section 437 of the Code of Civil Procedure would be amended to read as follows:

1 **§ 437c.**

2
3 **(a)** * * *

4
5 **(b)** (1)–(4) * * *

6
7 (5) All evidentiary objections ~~not made at the hearing shall be deemed~~
8 ~~waived~~ shall be in writing, except in unlawful detainer cases. Failure to
9 serve and file written objections waives the objections.

10
11 (6)–(7) * * *

12
13 **(c)–(s)** * * *